HON'BLE SRI JUSTICE B. PRAKASH RAO
&
HONOURABLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO.23325 OF 1999

Dated 16-03-2007

Between:

Vonkela Subrahmanyam son of Venkataiah, aged 68 years residing at D.No.25/B/43-1, Savitri Nagar, Dargamitta,Nellore (died) and others.

...Petitioners.

And:

The Special Court Under A.P. Land Grabbing (Prohibition) Act, Hyderabad represented by its Registrar and others.

...Respondents.

HON'BLE SRI JUSTICE B. PRAKASH RAO
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ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

The petitioner herein who has been declared as Land Grabber files this writ petition seeking writ of certiorari to call for the records in L.G.A.No.1 of 1999 dated 30-9-1999 of the Special Court under A.P. Land Grabbing (Prohibition) Act Hyderabad dismissing the appeal and confirming the orders in L.G.O.P.No.20 of 1990 dated 6-11-1998 on the file of the Special Tribunal under A.P.Land Grabbing (Prohibition) Act-cum-District Judge, Nellore allowing the application filed by respondent No.3 herein under Section 8 [1] of Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 and to quash the same.

3rd respondent who has filed L.G.O.P.No:20 of 1990 against the petitioner herein is the applicant before the tribunal and he will be referred to as arrayed before the tribunal for the sake of

convenience.

The facts of the case which arise are that:

In the application L.G.O.P.No:20 of 1990 filed by the applicant-3rd respondent, it has been claimed that the Tahsildar, Nellore had initially granted the said house patta on 25-1-1969 in his favour to an extent of 33 1/3rd ankanams in plot No.59 in Survey No.2040/3 of Nellore Bit-I village in Nellore Municipal Limits and he was put in possession of the same. Now it is known as Savitri Nagar area, Dargamitta, Nellore. Since then, he was in possession and enjoyment of the same. However, the petitioner herein has grabbed the said site about 6 years back and constructed a house. Hence, the application.

Contesting the claim of the applicant, it is contended by the petitioner herein that he retired as a conductor from A.P.S.R.T.C., Nellore and he obtained the said site, which was vacant, in the year 1974 and he developed the same by spending about Rs.12,000/- by filling up the pits and levelling the said site and constructed a thatched house and since then he has been living in the same. It is further contended that he is not aware of the assignment of the plot in favour of the applicant in the year 1969 and apart from that, the applicant was never in possession of the same. However, the said patta granted in favour of the applicant, was cancelled by the District Collector, Nellore vide proceedings in Dis.No.13977 of 72 dated 15-5-1975 and hence, the applicant has no right and not entitled for the relief as sought for.

It is admitted in the counter that the suit in O.S.No.703 of 1984 on the file of the Principal District Munsif Nellore, filed by the petitioner against the claimant, was dismissed on 22-7-1998 holding that the cancellation of patta in favour of the applicant is not proper and the claimant was continued to be the owner of the

same. However, it is stated that the said finding is not final and no claim can be made by the applicant.

On these and other allegations made on either side, the Special Tribual has framed the following issues:

1.Whether the applicant has title to the extent of 33 1/3 ankanams in plot No:59/Sy.No:2040/3 of Nellore Bit-I village?

2.Whether the petitioner herein grabbed the said site?

3.Whether the petitioner herein perfected his title to the site by adverse possession?

4.Whether this tribunal has no jurisdiction to entertain this petition?

5.Whether the applicant is entitled to the reliefs sought in the petition?

6.To what relief?

P.ws.1 to 4 were examined and Exs.A.1 to A.4 were marked on behalf of the applicant. On the other hand, R.ws.1 and 2 were examined and Exs. B.1 to B.9 were marked on behalf of the petitioner herein. Ex.C.1 was marked through Court.

On appraisal of the entire evidence and material on record, the Special Tribunal found that the applicant has got valid title to the land in question as claimed by her and the petitioner herein has grabbed the same and further he has not perfected title by any adverse possession. That apart, it is also held that the petitioner herein has grossly failed to establish that he is not a land grabber in spite of the heavy burden lying on him. Thereby, the said application filed by the applicant, was allowed directing the petitioner herein to deliver the site to the applicant in its original possession. However, the claim in regard to compensation was negatived.

Challenging the same, the petitioner herein has filed an appeal in L.G.A.No.1 of 1999 on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad under the said

Act wherein again on reappreciation of the entire evidence and material on record, the lower appellate tribunal while concurring with the view taken by the tribunal and upholding the finding of the tribunal that the applicant has got valid title to the land in question and the petitioner herein is a Land Grabber and he has not perfected by any title by adverse possession, dismissed the said appeal. Hence this writ petition.

The learned counsel appearing for the petitioner, apart from canvassing on the merits, especially pleaded that since the assignment claimed by the applicant under Ex.B.1 was already cancelled, no right, title or interest can be claimed by the applicant and therefore, the applicant has totally failed to establish the title in respect of the land in question. It is also contended that at no point of time, the report of the M.R.O. as contemplated under the provisions of the Act, was not called for before the special tribunal and in the absence of such report, the proceedings should not have been proceeded with and therefore, the order impugned herein is liable to be set aside. In support of his contention, the learned counsel sought to place reliance on a Division Bench Judgment of this Court reported in SHALIVAHANA BUILDERS (PVT) LTD. AND ANOTHER V. SRI GANAPATHI COOPERATIVE HOUSING SOCIETY AND OTHERS ([1]).

Learned counsel appearing on behalf of the applicant sought to sustain the findings of both the tribunals mainly on the ground that no case has been made out by the petitioner to the effect that he was not a land grabber and therefore, the judgment impugned would not warrant any interference by this Court.

On the rival contentions of both the parties as well as the material available on record, the question which arise for consideration is as to: (1) whether the findings of both the tribunals

as to the fact that the petitioner was a land grabber, are sustainable and that (2) whether the failure to obtain the report of the Mandal Revenue Officer as required under the provisions of the Act, is fatal to the case of the applicant or not?

Point No:1: In this regard, the entire claim of the applicant solely rests on the assignment which has been made on 25-1-1969.

It is the case of the applicant that after the assignment, she was put in possession and enjoyment of the land in question and in the meanwhile, the petitioner herein has grabbed the same and made a construction thereon.

On the other hand, it is contended by the petitioner herein that he was an employee as conductor in A.P.S.R.T.C. and after retirement in the year 1974, since the land in question was vacant, he occupied the same and leveled it by filling up the pits etc., by spending a substantial amount and made a construction thereon.

Admittedly, the petitioner herein has failed to prove his title through either any document or through any assignment or otherwise. The petitioner himself has admitted in his counter that since the land in question was found to be a vacant one he occupied and developed the same and constructed a thatched house thereon and has been living therein along with his family. Therefore, on the fact of it, in the absence of any such traces as to the title or semblance of valid interest, the petitioner cannot sustain any of his contentions. Though it is contended by the petitioner herein that in view of the cancellation of the assignment made in favour of the applicant, she has no right or title or possession to the land in question, but on an appreciation of the evidence both oral and documentary as well as the judgment in O.S.No:703 of 1984 filed by the petitioner herein, which was

dismissed holding that the cancellation of assignment in favour of the applicant, was not proper and the applicant continued to be the owner of the land in question, held that the petitioner herein was a land grabber and accordingly, the petition filed by the applicant was allowed by the special tribunal and the same was confirmed by the special Court (appellate authority).

The finding in the above civil suit in O.S.No:703 of 1984 has rightly been held to be operated as resjudicata, which prevents the petitioner from raising the plea that due to cancellation of assignment, the applicant has no title or right over the land in question.

Apart from that, the petitioner has also failed to show that the applicant is a member of Gandhi Centenary Year Harijan House Sites Co-Operative Society, Nellore and the land in question was granted to the applicant out of the allotted land to M/s Gandhi Centenary Year Harijan House Sites Co operative Society, Nellore being its member.

Even in the Judgment of this Court in W.P.No.2618 of 1979 challenging the orders of the District Revenue Officer dated 13.7.1976 in his R.C.B4/1382/76 cancelling pattas granted in favour of the Ramasubbaiah Memorial Co-operative Housing Society Limited, the order of the District Revenue Officer, Nellore was set aside and the Joint Collector, Nellore was directed to conduct de nove enquiry while directing the members of the society to submit their representation. However, subsequent thereto nothing has been shown that there was any such cancellation of the assignment made in favour of the applicant. Therefore, both the tribunals are justified in holding that the proceedings as sought to be relied on by the petitioner herein dated

15-5-1975 do not pertain to the patta granted to the applicant nor any cancellation thereof.

Further, both the tribunals are also justified in holding that the petitioner has not acquired any adverse possession

Thus, all the findings of both the tribunals as to the identity of the assignment in favour of the applicant, as to the adverse possession of the petitioner herein as well as his land grabbing, which are purely a question of fact, are concurrent. As such, having regard to such findings of fact arrived at by both the Tribunals, it is not open for this Court to reappreciate any evidence and material on record or to go to any different conclusion and more so, the petitioner has utterly failed to make out any perversity or miscarriage of justice or lack of any evidence and material. It has been held in the decision of the Supreme Court reported in KONDA BAPUJI V. GOVERNMENT OF A.P., HYDERABAD AND OTHERS ([2]) that this Court cannot interfere with any such findings of fact as no such valid ground is made out.

In this case, on appraisal of the entire evidence available on record and especially on the face of the concurrent findings of both the Tribunals, we do not find any merits in the contention of the petitioner.

POINT NO:2: In regard to this point, it is relevant to note that the very object and the purpose for which the legislation has been made, is to prohibit the activity of land grabbers in regard to the land belonging to the Government, local authority, religious or charitable institutions or endowments including a wakf or private persons.

In case an application of this nature under the provisions of section 8 of the Act, is filed, every such an application may be

referred for local inspection or verification or both to the Mandal Revenue Officer and on such reference by the special Court, the Mandal Revenue Officer or the other officer shall make an inspection or verification on the following aspects:

1.the correctness of the statements made in the application,

2.the facts relating to ownership, actual possession and use of the land concerned etc., facts.

In this context, it is pertinent to note that the provisions under rule 6 of the Rules, is not a mandate one to refer the application to the Mandal Revenue Officer.

The intention of the legislature in referring the application under rule 6 of the Rules, is to cull up the collusive applications by the private persons in regard to the land belonging to the Government or the local authority.

But, in a case of this nature, which is between two private parties, the failure to refer the application to the Mandal Revenue Officer for verification and calling for report, would not have any impact on the facts of the case. Apart from that, the dispute between two private parties, can as well be adjudicated after holding a full fledged enquiry basing on the material available on record adduced on either side.

In view of the same and in the light of the provisions of rule 6 of the Rules, we have no hesitation to hold that referring the application for verification and calling for the report from the Mandal Revenue Officer, is not a mandate and apart from that, the failure to call for the report from the Mandal Revenue Officer, would not amount to cause any prejudice to either of the parties or it would not amount to vitiate the entire proceedings and that it cannot also be said that the same is fatal to the case.

Therefore, this point is answered against the petitioner.

Hence, there are no merits in the above writ petition and as such, the same is liable to be dismissed.

Accordingly, this writ petition is dismissed. No costs.

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Justice B. PRAKASH RAO

Dated 16th March, 2007.

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Justice M. VENKATESWARA REDDY

Dvs

HON'BLE SRI JUSTICE B. PRAKASH RAO

&

HON'BLE SRI JUSTICE M. VENKATESWARA REDDY

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WRIT PETITION NO.23325 OF 1999

(Judgment delivered by the Honourable
Sri Justice B. Prakash Rao)

Dated 16th March, 2007

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[1] 2003 (2) ALT 511 (DB)

[2] 2002(3) SCC 258